INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 331

J. A. HAGAN, INDIVIDUALLY, AND DOING BUSINESS AS EL REY CHEESE CO., JACK AROS AND EVERETT HAGAN, PETITIONERS

v.

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. The opinion of the circuit court of appeals (R. 66–74) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 21, 1946 (R. 75). The petition for a writ of certiorari was filed in this Court on July 25, 1946. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347 (a)).

QUESTIONS PRESENTED

1. (a) Whether the inclusion of "etc." following a list of specified classes of documents required to be produced pertaining to purchases and sales of named cheeses during a specified period renders an administrative subpoena duces tecum invalid for reasons of uncertainty, indefiniteness and unreasonableness.

(b) If so, where an order of a district court which itself described the documents to be produced with sufficient particularity is nevertheless improper because the original subpoena, as issued by the Price Administrator, was invalidly indefinite.

2. Whether "books, records, ledgers, day books, and sales invoices", covering sales and purchases of commodities subject to price control, requested by the Price Administrator's subpoena, could properly be regarded by the Administrator as material and relevant to an investigation to assist in the administration and enforcement of the Emergency Price Control Act and regulations thereunder.

3. Whether Congress may constitutionally authorize the Price Administrator to issue subpoenas duces tecum for purposes of investigation to assist in the administration and enforcement of the

Emergency Price Control Act and regulations thereunder.

4. Whether the Emergency Price Control Act authorizes the Price Administrator to make investigations to assist in the administration and enforcement of the Emergency Price Control Act and regulations thereunder and to delegate to subordinate officials the authority to conduct such investigations.

5. (a) Whether the issue of respondent's custody of the documents sought to be produced by an administrative subpoena duces tecum should be determined at the hearing on judicial enforcement of the subpoena.

(b) If so, whether the Administrator's showing was sufficient to justify the conclusion that petitioners in fact had such custody.

6. Whether custodians of documents required by regulation to be kept for public purposes may assert the privilege against self-incrimination when called upon by subpoena duces tecum to produce such documents, where such custodians are responsible employees of the business involved.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App. Sec. 901 et seq.) and of Maximum Price Regulation 280 and Revised Maximum Price Regulation 289 and Temporary Maximum Price

Regulation 22 (7 F. R. 10144, 9 F. R. 5140, and 7 F. R. 7914, respectively) are set forth in the Appendix, pp. 19–24 *infra*.

STATEMENT

Petitioner J. A. Hagan is the owner, Jack Aros is the bookkeeper, and Everett Hagan the manager of the El Rey Cheese Co. (R. 2–3), which company is engaged in the wholesale cheese business, and is therefore subject to Maximum Regulation 280, Revised Maximum Price Regulation 289, and Temporary Maximum Price Regulation 22. Section 202 (b) of the Emergency Price Control Act requires sellers to keep such records and reports as the Price Administrator may direct and to permit the Administrator on request to inspect them. The provisions of the aforementioned regulations requiring the keeping of records relating to sales thereunder are set forth in the Appendix, pp. 21–24 *infra*.

On May 24, 1945, and on several occasions thereafter, the Administrator, pursuant to Section 202 of the Act,[1] attempted to examine petitioners' records in order to determine whether they had complied with the Act and the regulations. Petitioners on each occasion refused to permit the Administrator's investigators to make such investigation and inspection (R. 4–5). Thereupon, on June 9, 1945, a subpoena was issued, signed by the Acting District Director,

[1] See Appendix, *infra*.

ordering the petitioners Jack Aros and Everett Hagan to appear and produce before an enforcement attorney of the Office of Price Administration specified books and records of the El Rey Cheese Company (R. 10–11).[2] This subpoena was properly served (R. 15). On the return date, petitioners' attorney claimed that he would not permit his clients to answer it because it was not signed personally by Chester Bowles, the Price Administrator (R. 17). On August 13, 1945, subpoenas similar in content but signed personally by Chester Bowles were served upon Jack Aros, bookkeeper, agent, and attorney-in-fact of the El Rey Cheese Co., and Everett Hagan, manager, returnable August 16 (R. 18, 11–14). These subpoenas required the persons named therein to appear and testify concerning the sales and deliveries of Swiss Gruyere Type Cheese and Taylor-Maid Gruyere Type Swiss Cheese, for the period from September 28 to October 2, 1942, and for the period from June 15, 1944 to July 28, 1945, and to produce "all the books, records, ledgers, day books, purchase and sales invoices, etc." covering the purchase and sale of the same commodities during the same periods (R. 11–14). On the return date an attorney for petitioners appeared specially for the purpose of quashing the issuance and service of the subpoenas

[2] J. A. Hagan lived in Arizona, outside of the jurisdiction of the court. He does not operate the business, and has placed it in the hands of his brother, Everett Hagan, and Jack Aros (R. 45).

upon various grounds: that the return date, August 16, 1945, was a legal holiday for all Federal offices; that he questioned the authenticity of Chester Bowles' signature; that insufficient notice was given; that the Fourth Amendment of the Constitution was violated; and that the information requested was not material to any investigation authorized by the Price Administrator nor within his authority to demand (R. 21–22). The Administrator pursuant to Section 202 (e) of the Act, thereupon applied to the district court for an order compelling obedience to the subpoenas. Affidavits were submitted in support of the Administrator's petition and in opposition. (R. 14–20, 26–35). After a hearing, the court, on October 29, 1945, entered orders directing petitioners Jack Aros and Everett Hagan to comply. The terms of the subpoenas, as issued by the Administrator, were followed, except that the phrase "etc." following the list of records required to be produced was eliminated. (R. 35–37). On June 21, 1946, these orders were affirmed by the circuit court of appeals for the ninth circuit (R. 66–74).

ARGUMENT

1. *The subpoenas, either as issued by the Administrator or as enforced by the court, were not uncertain, indefinite, or unreasonable.* Petitioners contend that the court below erred in affirming the district court's enforcement of the

subpoenas duces tecum issued by the Administrator, on the ground that these subpoenas were invalidly uncertain, indefinite, and unreasonable. This argument is based entirely on the fact that the subpoenas, as issued by the Administrator, asked for the production of "all of the books, ledgers, day books, purchase and sales invoices, *etc.*" in the sales of two specified cheeses for the periods from September 28, to October 2, 1942 and from June 15, 1944 to July 28, 1945. This inclusion of the "etc." is apparently objected to as calling for production of an undefined and unlimited range of documents.

The only issue before the circuit court of appeals, however, was the propriety of the order of the district court,[3] and in that order the "etc.," which petitioners have found so offensive, had been eliminated. It is difficult to conceive of an order more certain, definite, reasonable, and precise in terms, than that of the district court requiring petitioners to appear and produce documents. The documents ordered to be produced are a definitely enumerated list—books, records, ledgers, day books, and purchase and sales invoices; the periods involved are precisely specified; likewise, the commodities covered are denoted by style name. If the subpoenas as drawn by the Administrator were too loose in

[3] See *Cudmore* v. *Bowles*, 145 F. 2d 697, certiorari denied, 324 U. S. 841 (App. D. C.).

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their description of the documents sought, the district court properly, in the exercise of its discretion, modified them to render them valid, and then enforced them as modified. There is no reason why the district court should have been compelled to accept or reject them in their entirety, any more than a court enforcing any order of an administrative body is denied discretion, where it finds the order partially illegal, to enforce it insofar as it is valid. Cf. *J. I. Case Co.* v. *National Labor Relations Board,* 321 U. S. 332.

Even if the court's order were to be tested by the subpoenas as drafted by the Administrator instead of as modified by the court, they could not be regarded as unreasonably general in coverage. The "etc." would be subject to the normal interpretation pursuant to the rule of *eiusdem generis,* and would mean merely other records pertinent to the same subject matter, i. e., to sales of the two specified cheeses in the specified periods. Even if the term "etc." were construed as including *all* documents relating to all of the transactions in the two cheeses in question, they would still be enforceable. *Consolidated Rendering Co.* v. *Vermont,* 207 U. S. 541, 554; *Nelson* v. *United States,* 201 U. S. 92.

2. *The materiality and relevancy of the information and documents sought were apparent on the face of the subpoenas, petition, and supporting affidavits.* Petitioners' second and third points are based on the assumption that the

materiality and relevancy of the information and documents sought were not apparent from the face of the subpoenas, petition, and supporting affidavits.[4] On this assumption, they conclude that the district court erred in enforcing compliance with the subpoenas without requiring further proof. However, the documents sought were "books, records, ledgers, day books, purchase and sales invoices" covering for specified periods, purchases, sales, and deliveries of cheeses subject to price control, maximum prices on which had been established by regulations of the Price Administrator (R. 11–14). Contrary to petitioners' contention (Brief, p. 17), the purpose of the investigation was explicitly stated—namely, to determine whether petitioners had complied with the Act and regulations (R. 4). Such an investigation was authorized under Section 202 of the Act. Section 202 (a) authorizes the Administrator "to make such * * * investigations * * * as he deems necessary or proper to assist him * * * in the administration and enforcement of this Act and regulations," and under Section 202 (b) the Administrator "may, whenever necessary, by subpena require any such person [i. e., a person dealing in a regulated commodity] to appear and testify or to appear and produce documents, or both, at any designated place." It is difficult to

[4] The probable materiality of the records may appear from the face of the subpoena and petition supporting it. *Brown* v. *United States*, 276 U. S. 134, 143.

conceive of any records which would be more material and relevant to an investigation to determine whether petitioners had complied with these regulations and to assist in the enforcement of the Act and the regulations, than the documents evidencing the very transactions in question. The cases cited on pp. 17–22 of petitioners' brief have no bearing, since there is no fishing expedition here into "records, relevant or irrelevant, in the hope that something will turn up" (*Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 306). The only documents sought are relevant to a lawful inquiry, within the rule of *Oklahoma Press Publishing Co.* v. *Walling,* decided February 11, 1946, Nos. 61, 63 October 1945 Term, slip sheet pp. 15–16, 66 S. Ct. 494, 505–506.

Petitioners rely in part on the fact that there was no direct allegation in the petition that the sales of the commodities specified came under the maximum price regulations. However, such an omission is of no importance, for, (1) as the court below pointed out (R. 70), the Federal Register Act (49 Stat. 500, 502, 44 U. S. C. Sec. 307), provides that the court shall take judicial notice of the provisions of the regulation; (2) the question of coverage need not be determined in advance of investigation. *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501.

3. *It was within the powers of Congress to subpoena the information sought or to delegate such power to the Price Administrator.* Petitioners rely on *Harriman* v. *Interstate Commerce Com-*

mission, 211 U. S. 407, to assert that the subpoena powers conferred by Sections 202 (a) and (c) of the Emergency Price Control Act are beyond the powers of Congress to exercise or confer, and they assert that that case is "on all fours" with the instant case. All that that case held, however, was that Congress had not delegated to the Interstate Commerce Commission the power to delve into the affairs of railroads in order to obtain information on the basis of which legislation could be recommended to Congress. In that case, this Court added that a serious constitutional question would have been raised had such delegation been made. The powers conferred upon the Price Administrator, however, do not authorize investigations unlimited in scope, or for purposes of recommending legislation, but only into such matters as are deemed by the Administrator to be necessary and proper to accomplish certain specified purposes, namely the establishment of orders and regulations under the Act and the administration and enforcement of the Act and regulations. These are precisely comparable to the purposes for which the *Harriman* case held that the Commission *did* have the power to issue subpoenas: the regulation of the interstate business of carriers, and the enforcement of the regulations enacted. 211 U. S. at 419. If it was constitutional for Congress to establish a program of price control, it was likewise constitutional for it to provide for such means as were necessary and

proper to accomplish it. Cf. *Oklahoma Press Publishing Co.* v. *Walling,* decided Feb. 11, 1946, Nos. 61, 63 October 1945 Term, 66 S. Ct. 494.

Nor is there any validity to petitioners' contention that the power of Congress to authorize the use of the subpoena to further a lawful inquiry does not extend to the point where *employees* of sellers can be required to testify or produce records. If this were true, the Administrator would be powerless to investigate any corporation, or any other type of business organization subject to absentee ownership.[5]

4. *The investigation was authorized by the Emergency Price Control Act, and the Administrator was empowered to delegate his investigative powers.* There is no merit whatever in petitioners' contention that the investigation for which the subpoenas were issued was one beyond the powers of the Price Administrator. The investigation was "to determine if there was evidence that respondents [petitioners herein] and each of them had complied with the provisions of the Act and the regulations thereunder" (R. 4).

[5] Even the records of persons in no respect subject to price control may be subpoenaed where necessary to an investigation of persons who are subject to price control. *Bowles* v. *Shawano National Bank*, 151 F. 2d 749 (C. C. A. 7), certiorari denied, Feb. 25, 1946, No. 674, October 1945 Term; cf. *President of the United States* v. *Skeen*, 118 F. 2d 58, 59 (C. C. A. 5).

As previously shown, Section 202 of the Act authorizes precisely such investigations.

The contention that Congress did not intend investigations where no violations have been found and alleged in advance ignores the fact that a primary purpose of the subpoena is to enable the Administrator to discover whether there has in fact been a violation, not to corroborate something which he already knows. Cf. *Blair* v. *United States,* 250 U. S. 273, 282; *Oklahoma Press Publishing Co.* v. *Walling,* decided Feb. 11, 1946, Nos. 61, 63 October 1945 Term, slip sheet p. 21, 66 S. Ct. 494, 509; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501.

The further contention that Congress did not intend to permit the Administrator to delegate his investigative powers cannot be taken seriously. If the Administrator must personally take the testimony in the many hundreds of investigations which occur daily in all parts of the country, then enforcement of the Act would be at a virtual standstill. The delegation of the functions of establishing maximum rent regulations (*Bowles* v. *Griffin,* 151 F. 2d 458 (C. C. A. 5)), of instituting enforcement suits (*Bowles* v. *Wheeler,* 152 F. 2d 34 (C. C. A. 9), certiorari denied, 326 U. S. 775), and of issuing and signing subpoenas (*Porter* v. *Murray,* decided June 28, 1946 (C. C. A. 1); *Pinkus* v. *Porter,* 155 F. 2d 90 (C. C. A. 7); *Porter* v. *Gant-*

ner & Mattern Co., decided June 24, 1946 (C. C. A. 9); *Raley* v. *Porter*, decided June 17, 1946 (App. D. C.) has been upheld [6] by the courts.

5. *The district court was not required to adjudicate the issue of the custody and control of the records at the proceeding to enforce the subpoenas; and in any event, there was sufficient basis for the court to find that Everett Hagan and Jack Aros had such custody.* Petitioners assert that the district court erred in not considering the defense that Jack Aros and Everett Hagan did not have custody and control of the records required. There is no requirement, however, that the issue of such custody must be adjudicated at the time of the order enforcing the subpoenas rather than at such time as contempt proceedings are brought for disobedience of the order.[7]

[6] The Circuit Court of Appeals for the Sixth Circuit has just rendered a decision contrary to those of the four circuits cited above with respect to delegation of the subpoena power. *Porter* v. *Mohawk Wrecking and Lumber Co.*, decided August 8, 1946 (C. C. A. 6).

[7] An order requiring a person to produce certain documents must be construed as referring to such of the documents as are in that person's power to produce. If he lacks such power as to any or all of the documents ordered, the proper way to show this is to obey the subpoena and appear before the Administrator with such documents, if any, that he is able to produce. (This is especially true in a case such as the instant one, in which petitioners were ordered to appear and testify as well as produce documents.) If the Administrator doubts the statement of lack of custody, its truth can be tested in contempt proceedings. *McGarry* v. *Securities and Exchange Commission*, 147 F. 2d 389 (C. C. A. 10). In the instant case, however, petitioners did not appear on

McGarry v. *Securities and Exchange Commission*, 147 F. 2d 389, 392 (C. C. A. 10). In *Bowles* v. *Insel et al.*, 148 F. 2d 91 (C. C. A. 3), the same objection of lack of custody was raised by appellant who was objecting to the enforcement of a subpoena by the district court. The circuit court of appeals dismissed this argument as one "so lacking in merit as not to warrant discussion." See also *Bowles* v. *Bay of New York Coal & Supply Corp.*, 152 F. 2d 330 (C. C. A. 2).[8]

In any event, there was sufficient basis for the district court to conclude that petitioners Everett Hagan and Jack Aros did have custody and possession of the records. While they both, in

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the return date of the subpoena, but merely sent in their attorney, who appeared specially and moved to quash the subpoenas on various grounds, not including lack of custody. They sought to show lack of power to produce the documents by direct attack on the subpoenas in the court proceedings for their enforcement, and have continued this line of attack on successive appeals. Since the subpoenas require them to produce only such documents as they are able to produce, petitioners' tactics must be regarded as not designed to protect their interest or preserve their rights, but merely to achieve the greatest possible delay.

[8] *Cobbledick* v. *United States*, 309 U. S. 323, relied on by petitioners, is in no respect in point. There it was held that denial of a motion to quash a subpoena to appear before a grand jury was not appealable; it was also pointed out in the opinion that a court order requiring testimony before an administrative tribunal was appealable. However, no contention has ever been made in the case at bar that the order involved is not appealable; nor does the question of the appealability of the order have any bearing on the scope of issues before the trial court.

their affidavits, denied that the records were in their control, they did not disclaim custody or possession (R. 26–34). At the hearing, counsel for the Administrator stated that opposing counsel was well aware that J. A. Hagan, the owner of the business, resided in Arizona, and did not operate the business, placing it in the hands of Everett Hagan and Jack Aros; and that the latter were manager and bookkeeper of the concern and that all records were under their management and control (R. 45). This statement was not disputed by counsel for petitioners. J. A. Hagan did not appear or submit affidavits concerning the custody or control of the records. There thus was ample justification for the district court to decide that Everett Hagan and Jack Aros had custody and possession of the records. Nothing could be gained by requiring more elaborate proceedings which could arrive only at the same result.

6. *There was no violation of the Fifth Amendment.* The privilege against self-incrimination does not extend to the point of permitting the withholding of records required by law to be kept. *Wilson* v. *United States,* 221 U. S. 361, 380; *Davis* v. *United States,* decided June 10, 1946, No. 404, October 1945 Term; *Bowles* v. *Glick Bros. Lumber Co.,* 146 F. 2d 566 (C. C. A. 9), certiorari denied, 325 U. S. 877; *Rodgers* v. *United States,* 138 F. 2d 992 (C. C. A. 6). The records sought in the instant case fall within that category. Petitioners seek to distinguish the *Wilson* case on the ground that

they are merely employees of the company whose records are sought. The same argument was made in the *Wilson* case itself, however, and rejected. Moreover, if, as employees, petitioners were not themselves in a responsible position, they could not be guilty of a crime and would have no claim of possible incrimination of themselves, nor could they assert the claim on behalf of another, such as J. A. Hagan, the absentee owner of the business. *Hale* v. *Henkel,* 201 U. S. 43; *Wheeler* v. *United States,* 226 U. S. 478. And if they acted in a managerial capacity to the extent that they might be personally liable for violations, as appears to have been the case, they themselves were likewise individually under the obligation to keep and produce the records just as though they had been proprietors.

Even if the petitioners had a legitimate claim that the production of the records sought would tend to incriminate them, Section 202 (g) of the Act would compel their production. That section provides that no person shall be excused from complying because of the privilege against self-incrimination, but that the immunity provisions of the Compulsory Testimony Act of 1893 were to apply to any individual who specifically claimed his privilege. Thus if petitioners had a claim of privilege, the proper method of asserting it is to claim the privilege, produce the documents required, and then if subsequent criminal proceedings are brought against them, to assert the im-

munity conferred by the Compulsory Testimony Act.

CONCLUSION

The decision of the court below is correct. There are no conflicts of decision, and no question of public importance is presented. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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GEORGE MONCHARSH,
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DAVID LONDON,
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SEPTEMBER 1946.

APPENDIX

STATUTE

Pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 et seq):

Section 202 (a):

> The Administrator is authorized to make such studies and investigations, *to conduct such hearings,*[1] and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, order, and price schedules thereunder.

Section 202 (b):

> The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories,

[1] Added by sec. 105 (a) of Stabilization Extension Act of 1944 (58 Stat. 632).

and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

Section 202 (c):

For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

Section 202 (e):

In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

Section 202 (g):

No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act

of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

REGULATIONS

1. Maximum Price Regulation 280. (7 F. R. 10144):

§ 1351.812. *Records and reports.* (a) As to all sales not specifically exempted by other sections of this Maximum Price Regulation No. 280 every person selling a listed food product shall preserve for examination by the Office of Price Administration all his existing records relating to prices which he charged for such listed food product delivered or supplied during the period from September 28, 1942, to October 2, 1942, inclusive, and his offering prices for delivery or supply of a listed food product during such period; and shall also preserve all information and records required by § 1351.807 of Temporary Maximum Price Regulation No. 22, and shall keep for examination by any person during ordinary business hours, a statement showing (1) the highest prices charged for such listed food product delivered or supplied during such period and his offering prices for delivery or supply of a listed food product during such period, together with an appropriate identification of such product and (2) all his customary allowances, discounts, and other price differentials.

(b) As to all sales not specifically exempted by other sections of this Maximum Price Regulation No. 280, every person selling a listed food product shall keep and make available for examination by the

Office of Price Administration records of the same kind as he has customarily kept relating to the prices which he charged for such food product during the period from September 28, 1942, to October 2, 1942, inclusive, and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices.

(c) Such persons shall submit such reports to the Office of Price Administration and keep such other records in addition to or in place of the records required in paragraphs (a) and (b) of this section as the Office of Price Administration may from time to time require.

2. Revised Maximum Price Regulation 289. (9 F. R. 5140.):

SEC. 5. *Records and reports.* (a) Every sale of a listed dairy product covered by this Revised Maximum Price Regulation 289, except as hereafter provided in this regulation, shall be invoked by the seller. The original invoice shall be delivered to the buyer and shall state (1) the date of purchase, (2) the names and addresses of the buyers and sellers, (3) the quantity, grade, and type of package of each listed dairy product sold, (4) the price, per unit of sale and in total, and (5) the geographical place for which the price is calculated.

(b) Every buyer of any listed dairy product shall preserve for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, the original, and every seller of any listed dairy product shall similarly preserve a copy, of each invoice required to be furnished by paragraph (a) of this section.

(c) Every person subject to this regulation shall keep such other records and shall submit such reports as the Office of Price Administration may from time to time request in writing, either in addition to or in substitution for records and reports therein required.

3. Temporary Maximum Price Regulation No. 22. (7 F. R. 7914.) This regulation, issued October 3, 1942, was superseded by Maximum Price Regulation No. 280 *supra* on December 3, 1942:

§ 1351.807. *Records and reports.* (a) As to all sales not specifically exempted by other sections of this Temporary Maximum Price Regulation No. 22 every person selling a listed food product shall preserve for examination by the Office of Price Administration all his existing records relating to prices which he charged for such listed food product delivered or supplied during the period from September 28, 1942, to October 2, 1942, inclusive, and his offering prices for delivery or supply of a listed food product during such period; and shall prepare, on or before October 24, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing (1) the highest prices charged for such listed food product delivered or supplied during such period and his offering prices for delivery or supply of a listed food product during such period, together with an appropriate identification of such product, and (2) all his customary allowances, discounts, and other price differentials.

(b) As to all sales not specifically exempted by other sections of this Temporary Maximum Price Regulation No. 22, every person selling a listed food product shall keep and make available for examination by the Office of Price Administration records of the same kind as he has customarily kept relating to the prices which he charged for such food product during the period from September 28, 1942, to October 2, 1942, inclusive, and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices.

(c) Such persons shall submit such reports to the Office of Price Administration and keep such other records in addition to or in place of the records required in paragraphs (a) and (b) of this section as the Office of Price Administration may from time to time require.

U. S. GOVERNMENT PRINTING OFFICE: 1942